IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 9253 of 2005.

Date of decision : January 23, 2007.

Kamal Kishore,

.....Petitioner

through Mr. Atul Lakhanpal, Advocate

v.

State of Punjab and others,

.....Respondents

through Mr.Sanjeev Sharma, Addl.A.G.Punjab
Mr.A.R.Takkar, Advocate,
for respondent No.3.

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**

2. **To be referred to the Reporters or not ?**

3. **Whether the judgment should be reported in the Digest ?**

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The petitioner has approached this Court for the issuance of a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction, quashing the decision of the respondents to sell Holiday Homes, situated in different States of India at throwaway prices, and for the issuance of directions to the respondents to hold a public auction, in case Holiday Homes are sold.

The petitioner claims to be the Chairman of an Organization, namely, “Illaqa Sudhar Committee, Ropar”, and an active social worker. It is averred in the petition that the petitioner was shocked to read a news item, published in “The Tribune”, dated 18.4.2005 to the effect that prime

properties of Punjab Tourism Development Corporation, located in five major holiday destinations, namely, Goa, Jaipur, Mussourie, Manali and Dharamshala have been sold for a paltry sum of Rs. 2.5 crores to a UK based businessman Bob Kalur. It is further averred that each of these properties is worth more than Rs.5 crores, and sale thereof for a paltry amount, without holding a public auction, is contrary to public interest and, therefore, the impugned action be set aside and the Punjab Tourism Development Corporation be directed to hold a public auction.

Counsel for the petitioner contends that though no challenge has been laid to the scheme of disinvestment, the petitioner's grievance is the paltry amount of Rs. 2.5 crores, allegedly realized for the sale of prime properties, belonging to the Corporation. It is contended that being public properties, these properties should have been sold only by public auction and, therefore, the entire transaction be set aside.

Counsel for the State of Punjab, as also counsel for the Corporation contend that as held by the Hon'ble Supreme Court in Balco Employees Union (Regd) vs Union of India, (2002)2 SCC 333, decisions, taken by the government, in exercise of its administrative powers, more particularly with respect to disinvestment, cannot be challenged in public interest litigation. It is contended that decision to disinvest and to sell properties, belonging to the Corporation, are bona fide and arrived at, after a considered decision by the Disinvestment Committee. The entire process was transparent and as averred in the reply, was finalized by way of global tenders. It is further contended that the present petition be dismissed, as the petitioner has failed to place any material on record that would indicate that the price, quoted by the successful party, was, in any manner, deficient and

did not reflect the value of the rights that are sought to be transferred to the successful bidder. It is further argued that the present petition is not in public interest as on account of changes in economic policy, disinvestment of loss making government organizations is prudent economic policy and, therefore, the public interest claimed, in essence, seeks to nullify the economically prudent policy of disinvestment.

We have heard learned counsel for the parties, perused the paper book, and are satisfied that this petition should be dismissed.

Before we proceed to adjudicate the merits of the controversy, it would be necessary to refer to certain judgments of the Hon'ble Supreme Court, setting out parameters with respect to policy matters as regards disinvestment. In Balco Employees' Union (Regd) vs Union of India and others, (2002)2 SCC 333, the Hon'ble Supreme Court, while adjudicating the validity of a decision of the Union of India to disinvest and transfer 51% share of M/S Bharat Aluminium Company Ltd, declined to interfere in disinvestment and held as follows :-

> "xx xx xx
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> 34. Applying the analogy, just as the court does not sit over the policy of Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not. Dealing with the powers of the Court while considering the validity of the decision taken in the sale of certain plants and equipment of the Sindri Fertilizer Factory, which was owned by a public sector undertaking, to the highest tenderer, this Court in *Fertilizer Corpn.Kamgar Union*

(Regd) v. Union of India SCC 568 at p.584, while upholding the decision to sell, observed as follows:-

> "We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a superauditor, take the board of directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

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46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Xx xx xx

Xx xx xx xx

51. The aforesaid observations, in our opinion, enunciate the legal position correctly. The policies of the Government ought not to remain static. With the change in economic climate, the wisdom and the manner for the Government to run commercial ventures may require reconsideration. What may have been in the public interest at a point of time may no longer be so. The Government has taken a policy decision that it is in public interest to disinvest in BALCO. An elaborate process has been undergone and majority shares sold. It

cannot be said that public funds have been frittered away. In this process, the change in the character of the Company cannot be validly impugned. While it was a policy decision to start BALCO as a company owned by the Government, it is as a change of policy that disinvestment has now taken place. If the initial decision could not be validly challenged on the same parity of reasoning, the decision to disinvest also cannot be impugned without showing that it is against any law or mala fide.

Xx xx xx xx

92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser

or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1.3.2001."

It would also be necessary to refer to a judgment of the Hon'ble Supreme Court reported as Duncan Industries Ltdand another vs Union of India, (2006)3 SCC 129, a relevant extract of which reads as follows :-

"xx xx xx xx

35. Turning to the Article 14 argument, we emphatically reiterate the now-accepted position that Article 14 does not require this Court to examine the intricacies of an economic scheme or pricing policy for its merits or its correctness, for that is in the domain of the executive or the legislative branches of the Government. Indeed, even if the Scheme, as revised, is "unwise" or even "unjust", there is no recourse before us for, as Justice Holmes elegantly put it:

> "We fully understand..... the very powerful argument that can be made against the wisdom of the legislation, but on that point we have nothing to say, as it is not our concern."

36. We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the courts to interfere in minute details, except on grounds of mala fides or extreme arbitrariness. Interference should be only within

> very narrow limits, such as, where there is a clear violation of a statute or a constitutional provision, or extreme arbitrariness in the Wednesbury sense. Neither the High Court nor have we found any of these vitiating factors in the administration of the Retention Price Scheme and the consequent payments/recoveries of the subsidy amounts. Thus, in our view, the action of the FIC Committee to adversely modify the subsidies framework, cannot be questioned on its merits."

A conjoint reading of the aforementioned judgments, relevant extracts whereof have been reproduced herein above, leads to a conclusion that intricacies of economic policy, whether with respect to disinvestment or other matters, fall within the domain of the executive or the legislature. A Court, though not divested of powers to examine the legality of such a legislation or scheme, would be justified in interfering only on grounds of mala fide, extreme arbitrariness, a violation of statutory or constitutional provisions.

In its reply, to the averments in the writ petition, the Punjab Tourism Development Corporation has submitted that the Corporation, incurred immense losses. The Disinvestment Department of the Government of Punjab, after due clearance from the Central Government, floated a global tender for disinvestment of properties, owned by the Corporation. A transparent system involving reputed consultants on the financial and legal side was ensured. It is further averred that factually no sale of properties took place, as management rights alone were to be transferred by way of an agreement envisaging purchase of shares. The

consideration amount of approximately Rs.2.53 crores is for management of properties, as also for taking over the liabilities of the Corporation, which includes payment to NRI/Indian Members of a Holiday Home Scheme amounting to Rs.3.45 crores, V.R.S dues of employees of the Corporation, amounting to Rs.1.10 crore, and the running costs of these Holiday Homes etc. The consideration would actually exceed Rs.8 crores. It is further detailed that the Government of Punjab, vide notification, dated 12.1.2001, set up a disinvestment commission, consisting of 7 members, under the chairmanship of Shri P.H.Vaishav, IAS (Retd), to consider disinvestment of public sector undertakings. The Commission, in its final report, recommended disinvestment and closure of the Punjab Tourism Development Corporation in a phased manner. Accordingly, the Directorate of Disinvestment, Department of Finance, Government of Punjab, appointed M/S Karvy Investor Services Ltd., Karvi House 46, Avenue 4, Street No.1, Banjara Hills, Hyderabad and J Sagar Associates, New Delhi, as global Advisors to pursue the disinvestment process for the Corporation, vide letter dated 9.12.2002. M/S Karvy Investor Services submitted its report to the Department of Disinvestment and on the aforementioned basis, the Department of Disinvestment decided to disinvest and sell the properties of the Corporation. Pursuant to a memorandum, submitted by the global advisors, the Director, Department of Disinvestment, Punjab, invited expression of interest for strategic sale of business of the Corporation, including the Holiday Home Scheme. A tender notice was published in leading newspapers inviting offers from necessary parties. In response to the tender notice, 17 parties submitted their expressions of interest. These offers were scrutinized by a Committee,

under the Chairmanship of Chief Secretary, Punjab and other Principal Secretaries of the State Government. Out of 17 offers submitted, 6 were shortlisted, namely, Club Mahindra, Unique Hotels and Restaurant Pvt. Ltd, Sujata Hotel Pvt. Ltd, Piccadily Hotels Private Limited, SPV and A.L.Batra Group. Out of the aforementioned six parties, two of them made a bid, i.e Sujata Holiday Private Limited and SPV. The bid, submitted by the latter, of Rs.2.53 crores was accepted. The bidder deposited a sum of Rs.1 crore as security in the shape of a bank guarantee with the Department of Disinvestment. It would be necessary to notice here, and as averred in the counter, filed by the respondents, most of the parties declined to submit bids. Though the bid offered was Rs.2.53 crores, the successful party is required to discharge liabilities of the Corporation, namely, a) 3.45 crore as membership fee received from the domestic and NRI members, b) 1.50 crore on account of increase in dollar value, c) 0.55 crore liability for running the said establishment/units, d) 1.10 crore VRS liability and e) 1.86 crore losses approx. The liabilities and obligations of the Corporation are to be transferred to the purchaser. Eventually, the decision was approved by the Cabinet Committee on disinvestment under the chairmanship of Chief Minister, Punjab. It is further averred that disinvestment was necessary, in view of huge liabilities and mounting losses, which the Corporation and the Government were financially incapable of discharging.

An additional affidavit of Shri Jagjit Puri, IAS, Special Secretary to Government of Punjab, Department of Tourism, Chandigarh, dated 21.9.2005, supports the aforementioned facts. The share purchase agreement, as also the relevant documents have been appended with the written statement, as also with the additional affidavit.

We have perused the documents carefully, and also considered their contents minutely. As noticed herein above, the petitioner has not laid challenge to the right of the government to disinvest or to the policy of disinvestment. His sole grievance is that these properties should be sold by public auction as a sum of Rs. 2.53 crores does not reflect their market value. We express our inability to accept this argument. The bid amount i.e Rs.2.53 crores, is dehors the existing obligations and liabilities of the Corporation that the successful bidder is required to discharge. The financial liabilities of the Corporation, coupled with the bid amount, would exceed Rs. 8 crores. In our considered opinion, the process of inviting global tenders, after appointing global advisors, as detailed herein above, was sufficiently transparent and does not suffer from any mala fide or arbitrariness. The petitioner has failed to place on record any material to suggest any foul play or mala fide in the disinvestment process, adopted by the Government. Though as a rule of prudence, it may be desirable that public property be sold by open auction, we find no illegality or infirmity in the process of inviting global tenders, as adopted by the State of Punjab. We find no reason to hold that inviting of global tenders is, in any manner, inferior to the process of sale by auction. The sale of properties, by global tenders, is an accepted business practice and where the Governments propose to disinvest public sector undertakings, which are generally mammoth in size, debt and liabilities, the best option, in most situations, is to float global tenders. Thus, we find no infirmity or illegality, whether in the process of disinvestment or in the policy adopted.

In view of what has been stated above, we are satisfied that the present petition has caused more harm to the government than benefit to any

public interest. We, however, refrain ourselves from imposing costs.

Dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 23, 2007.
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